

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amendment to the existing license agreement between Parks and York Avenue Tennis, LLC (“Licensee”) for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan. The amendment extends the agreement for one (1) year from September 1, 2017 to August 31, 2018; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks, and establishes a new Summer Season fee structure for Year 10, Extended Operating Year 1, and Option Years 1 and 2 of the agreement.

The amended concession agreement will also, among other things, (i) reduce the number of free and fee based tennis courts that Licensee may operate in the Summer Season from four (4) to two (2), (ii) require Licensee to ensure that all other courts in the Summer Season are exclusively operated and made available for public use in accordance with Parks’ tennis permitting procedures including, upon Parks’ request, sale of single-play tickets, with Licensee, at its sole cost and expense, checking to see that tennis players have Parks tennis permits and maintaining records of such; and (iii) require Licensee to assume all utility and security costs, including for the Summer Season.

Compensation to the City will be as follows: for each operating year, York Avenue Tennis, LLC shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. Year 10 (September 1, 2016 – August 31, 2017): \$2,637,258 vs. 35%; Extended Operating Year 1 (September 1, 2017 – August 31, 2018): \$2,637,258 vs. 35%; First Option Year (September 1, 2018 – August 31, 2019): \$2,637,258 vs. 35%; Second Option Year (September 1, 2019 – August 31, 2020): \$2,637,258 vs. 35%. Further, in the event Licensee’s Gross Receipts from the Summer Season exceed \$300,000, Licensee shall pay to the City 20% of all such Gross Receipts from the Summer Season in excess of \$300,000. Gross Receipts from the Summer Season shall only include those funds received for court use, instruction, or other services provided, which take place during the Summer Season.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

July 12th, 2017

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

- The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by __/__/__, which was at least 40 days prior to issuance of the solicitation.

If **NO**, check the applicable box below:

- The Agency certifies that each affected CB/BP received written notice by 03/03/2017, which was at least 40 days in advance of the FCRC meeting on 04/13/2017 at which the agency sought and received approval to use a different selection procedure.
- The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved concession agreement on / /

Award is a major concession. YES NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

- CPC approved on __/__/__ City Council approved on __/__/__ or N/A

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- The concession was approved by the FCRC on __/__/__.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Alexander Han

Title Director of Concessions

Signature _____

Date __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature _____

Date __/__/__

City Chief Procurement Officer

RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amendment to the existing license agreement between Parks and York Avenue Tennis, LLC for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan

Instructions: Provide all information requested below; check all applicable boxes.

A. SELECTION PROCEDURE

Sole Source

Other *Describe:* Amendment to existing license agreement between Parks and York Avenue Tennis, LLC.

B. NEGOTIATIONS

Instructions: Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

The amendment extends the agreement for one (1) year from September 1, 2017 to August 31, 2018; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks, and establishes a new Summer Season fee structure for Year 10, Extended Operating Year 1, and Option Years 1 and 2 of the agreement. The amended concession agreement will also, among other things, (i) reduce the number of free and fee based tennis courts that Licensee may operate in the Summer Season from four (4) to two (2), (ii) require Licensee to ensure that all other courts in the Summer Season are exclusively operated and made available for public use in accordance with Parks' tennis permitting procedures including, upon Parks' request, sale of single-play tickets, with Licensee, at its sole cost and expense, checking to see that tennis players have Parks tennis permits and maintaining records of such; and (iii) require Licensee to assume all utility and security costs, including for the Summer Season.

Compensation to the City will be as follows: for each operating year, York Avenue Tennis, LLC shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. Year 10 (September 1, 2016 – August 31, 2017): \$2,637,258 vs. 35%; Extended Operating Year 1 (September 1, 2017 – August 31, 2018): \$2,637,258 vs. 35%; First Option Year (September 1, 2018 – August 31, 2019): \$2,637,258 vs. 35%; Second Option Year (September 1, 2019 – August 31, 2020): \$2,637,258 vs. 35%. Further, in the event Licensee's Gross Receipts from the Summer Season exceed \$300,000, Licensee shall pay to Parks 20% of all such Gross Receipts from the Summer Season in excess of \$300,000. For example, Gross Receipts from the Summer Season of \$300,000 or less will apply toward Licensee's Operating Year payments and any Gross Receipts from the Summer Season in excess of \$300,000 will be subject to a 20% fee to be paid to Parks. Gross Receipts from the Summer Season shall only include those funds received for court use, instruction or other services provided, which take place during the Summer Season.

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

The agency determined that award of the concession is in the best interest of the City because:

York Avenue Tennis, LLC operates an indoor tennis concession at Queensboro Oval, Manhattan under a license agreement with Parks. They have operated at this site since 1979 and their current agreement commenced on September 1, 2007 for a ten-year term, expiring on August 31, 2017. Queensboro Oval is a unique site, located underneath the Manhattan side of the Ed Koch Queensborough Bridge. At 1.2 acres of red clay, the site provides for eight clay tennis courts, currently operated by York Avenue Tennis, LLC, underneath a tennis bubble.

The Queensboro Oval tennis concession serves more than 1,500 patrons each week with a majority of its usership residing in Manhattan's east side. There are no membership fees and they provide opportunities for New Yorkers to reserve courts on an hourly basis while providing opportunities for lessons with trained instructors including cardio tennis, drill and play, match play, and clinics. Junior development programs are also available with classes for pee-wee tennis (ages 2 ½- 6), pre-juniors (ages 6-8) and juniors (ages 9 and up). The City Parks Foundation also provides free youth instructional programs at Queensboro Oval, reaching more than 500 children over the past decade. The facility is a true recreational asset to the community.

Further, York Avenue Tennis, LLC currently pays the City of New York more than \$2.5 million annually in license fees. The calculation is based on the greater of a minimum fee vs. 35% of gross receipts. The minimum fee that the City currently receives, represents more than 50% of the concessionaire's grosses at this site.

As the current license agreement nears its expiration, Parks has received feedback from Manhattan Community Board 8 and the area's elected officials regarding alternative uses of the site. CB 8, the elected officials and some local residents have expressed support of seeing the site converted into a year-round outdoor park without a tennis bubble. Many other members of the community, including local residents and users of the tennis facility have expressed support of seeing a tennis bubble continue. Options discussed for the potential future of the site have included a year-round outdoor park with a turf field, a year-round outdoor park with a smaller turf field and four tennis courts, and a seasonal indoor sports concession with additional summertime amenities.

For the summer of 2017, Parks has launched a pilot program where Parks tennis permit holders may play at six of this facility's eight courts for no fee beyond what they pay for an annual tennis permit or single-play ticket. This also provides our permit holders for the first time with a climate-controlled, air conditioned place to play.

With this being the first season that summer tennis will be offered at Queensboro Oval, Parks and Licensee are adjusting the summer fee schedule earlier contemplated in the agreement. Licensees' fees for the summer season were originally premised on the assumption that the duration of the summer season would be four months, include four courts, and the business would grow throughout the years. The summer season contemplated by this amendment will be three months and give Licensee the ability to charge fees at only two courts. It will require them to make the other six courts available exclusively for Parks tennis permit holders in accordance with Parks' tennis permitting procedures, and it gives Parks the option to require Licensee to sell single-play tickets on behalf of the City. Licensee, at its sole cost and expense, shall check to see that tennis players have Parks tennis permits and maintain records of such. Further, Licensee is agreeing to pay for all utility and security costs, including for the summer season.

Parks is listening to ideas and communicating with all stakeholders while developing a plan for a longer-term vision of providing year-round recreation at the Queensboro Oval site. While this essential community outreach and planning is being done, Parks does not want to see this site, located under a bridge, remain fallow. Therefore, Parks is amending its existing agreement with York Avenue Tennis, LLC to, among other things, allow for an extension of one (1) year, with two (2) one (1)-year renewal options, to be exercised at the sole discretion of Parks. This will ensure that the facility's users can continue enjoying the recreation and

fitness opportunities provided by the concession, while Parks works with the community to consider options and develop a long-term plan for year-round recreation.

For the reasons set forth above, Parks believes that it is in the City's best interest to amend York Avenue Tennis, LLC's existing agreement for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan.

D. **PUBLIC HEARING** N/A – Subject award **NOT** a significant concession]

1. Publication & Distribution of Public Hearing Notice

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on __/__/__, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on __/__/__, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by __/__/__.

- _____, a NYC citywide newspaper on __/__/__ and __/__/__
- _____, a NYC citywide newspaper on __/__/__ and __/__/__

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 06/23/2017, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 06/23/2017, which was not less than 15 days prior to the hearing date. Subsequently, an amended notice was published once in the City Record on 6/28/17 and given to each affected CB-BP and the Committee Members on 6/23/17. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement in the newspapers indicated below. A copy of each such notice and amended notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 06/23/2017.

- New York Post, a NYC citywide newspaper on 06/29/2017 and 07/06/2017.
- Our Town, a NYC local newspaper published in the affected borough(s) on 06/29/2017.
- West Side Spirit, a NYC local newspaper published in the affected borough(s) on 06/29/2017.

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on 07/10/2017.

OR

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency

appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.



Mitchell J. Silver, FAICP
Commissioner

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F 212.360.1345

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City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Ms. Latha Thompson, District Manager, Manhattan Community Board #8

FROM: Phil Abramson, Director of Revenue Communications *PA*

SUBJECT: Notice of Joint Public Hearing, July 10, 2017: Intent to enter into an amendment to the existing license agreement between the New York City Department of Parks and Recreation and York Avenue Tennis, LLC for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan.

DATE: June 23, 2017

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation ("Parks") to be held on Monday, July 10, 2017 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

AMENDMENT of the existing license agreement between Parks and York Avenue Tennis, LLC ("Licensee") for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan. The amendment, among other things, extends the agreement for one (1) year from September 1, 2017 to August 31, 2018; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks, and establishes a new Summer Season fee structure for Year 10, Extended Operating Year 1, and Option Years 1 and 2 of the agreement.

Compensation to the City will be as follows: for each operating year, York Avenue Tennis, LLC shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. Amended Operating Year 11 (September 1, 2017 – August 31, 2018): \$2,637,258 vs. 35%; First Option Year (September 1, 2018 – August 31, 2019): \$2,637,258 vs. 35%; Second Option Year (September 1, 2019 – August 31, 2020): \$2,637,258 vs. 35%. Further, in the event Licensee's Gross Receipts from the Summer Season exceed \$300,000, Licensee shall pay to the City 20% of all such Gross Receipts from the Summer Season in excess of \$300,000. Gross Receipts from the Summer Season shall only include those funds received for court use, instruction, or other services provided, which take place during the Summer Season.

A draft copy of the amended license agreement may be reviewed or obtained at no cost, commencing on Friday, June 23, 2017 through Monday, July 10, 2017, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the NYC Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

Individuals requesting Sign Language Interpreters should contact the Mayor's Office of Contract Services, Public Hearings Unit, 253 Broadway, 9th Floor, New York, NY 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
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E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

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MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Ms. Latha Thompson, District Manager, Manhattan Community Board #8

FROM: Phil Abramson, Director of Revenue Communications *PA*

SUBJECT: Amended Notice of Joint Public Hearing, July 10, 2017: Intent to enter into an amendment to the existing license agreement between the New York City Department of Parks and Recreation and York Avenue Tennis, LLC for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan.

DATE: June 23, 2017

AMENDED NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation ("Parks") to be held on Monday, July 10, 2017 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

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TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

THIRD AMENDMENT TO LICENSE AGREEMENT

BETWEEN

YORK AVENUE TENNIS, LLC

AND

**CITY OF NEW YORK
PARKS & RECREATION**

FOR THE OPERATION AND MANAGEMENT OF AN INDOOR TENNIS FACILITY AND
CLUBHOUSE AT QUEENSBORO OVAL,

MANHATTAN, NEW YORK

M70-IT

DATED: _____, 2017

THIRD AMENDMENT TO LICENSE AGREEMENT (“Third Amendment” or “Amendment”) made this ___ day of _____, 2017, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and York Avenue Tennis, LLC (“Licensee”), a corporation organized under the laws of the State of New York, whose address is 488 East 60th Street, New York, New York 10022.

WHEREAS, the parties to this Amendment are parties to that certain License Agreement dated September 1, 2007, and amended on November 16, 2009 and February 8, 2012 (the “License” or “License Agreement”); and

WHEREAS, the License Agreement currently has an expiration date of August 31, 2017 and Parks is evaluating options for the future of the Queensboro Oval site to develop a plan for a longer-term vision of year-round recreation; and

WHEREAS, the parties wish to extend the Term of the License Agreement to ensure that the public can continue enjoying the recreation and fitness opportunities provided by the concession while Parks works to develop a plan for year-round recreation at the site; and

WHEREAS, until the summer of 2017, Parks has never elected to have a Summer Season pursuant to the License Agreement; and

WHEREAS, Parks and Licensee now seek to gauge the public interest in indoor, air conditioned summer tennis at the Licensed Premises; and

WHEREAS, Licensee’s fees for the Summer Season were originally premised on the assumption that the duration of the Summer Season would be four months, include revenue from four courts, and the business would grow throughout the years; and

WHEREAS, the current Summer Season is shorter and includes fewer courts than originally contemplated by the original Summer Season fees; and

WHEREAS, Licensee agrees to pay for all utility, security, and operation costs, including for the Summer Season; and

WHEREAS, the parties desire to amend the terms of the License Agreement subject to and in accordance with the terms of this Third Amendment.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereby do agree as follows:

1.1 Unless otherwise noted in this Third Amendment, all capitalized terms in this Third Amendment shall have the meaning ascribed to them in the License Agreement.

1.2 Section 2.1(j) of the License Agreement is amended by deleting Section 2.1(j) in its entirety and inserting the following new Section 2.1(j):

“Winter Season” shall mean the period of each Operating Year between the first Monday after Labor Day is observed and the following June 15th of the subsequent calenday year unless a modified Winter Season is approved in writing by Parks. The period between June 16th and the first Sunday after Labor Day is observed of each Operating Year shall be the “Summer Season” unless a modified Summer Season is approved in writing by Parks. In the event the Seasons are modified, Parks and Licensee may develop a plan to equitably address the impact of the modification.

1.3 Section 3.1 of the License Agreement is amended by deleting Section 3.1 in its entirety and inserting the following new Section 3.1:

This License shall be for a term beginning September 1, 2007 (“Commencement Date”) and ending August 31, 2018 or the last day of any renewal period(s) that are exercised (the “Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be the License Term (the “Term”). This License may be renewed, at the discretion of the Commissioner, for two (2) subsequent one-year terms upon the same terms and conditions herein.

1.4 Section 4.1 of the License Agreement is amended by inserting the following in the Table columns, beginning with Operating Year 10 in Section 4.1:

Operating Year	Minimum Annual Fee	VS. Percentage of Gross Receipts
10	\$2,637,258	35%
Extended Operating Year 1	\$2,637,258	35%
Option Year 1	\$2,637,258	35%
Option Year 2	\$2,637,258	35%

1.5 Section 4.2 of the License Agreement is hereby amended by renumbering the existing Section 4.2 as 4.2(a) and inserting the following new Section 4.2(b):

In the event Licensee’s Gross Receipts from the Summer Season exceed \$300,000, Licensee shall pay to the City 20% of all such Gross Receipts from the Summer Season in excess of \$300,000. For example, Gross Receipts from the Summer Season of \$300,000 or less will apply toward Licensee’s Operating Year payments and 20% of any Gross Receipts from the Summer Season in excess of \$300,000 will be paid to the City. This amount shall be determined and paid, without any prior demand therefor, within thirty (30) days of the end of the Summer Season. Gross Receipts from the Summer Season shall only include those funds received for court use, instruction, or other services provided, which take place during the Summer Season.

1.6 Section 9.2(b)(ii) of the License Agreement is hereby amended by deleting Section 9.2(b)(ii) in its entirety and inserting the following new Section 9.2(b)(ii):

Licensee shall have the right to operate two (2) free and fee based tennis courts during the Summer Season.

1.7 Section 9.2(b)(iii) of the License Agreement is hereby amended by deleting Section 9.2(b)(iii) in its entirety and inserting the following new Section 9.2(b)(iii):

All other courts shall be exclusively operated and made available for public use in accordance with Parks' tennis permitting procedures including, upon Parks' request, sale of single-play tickets. Licensee, at its sole cost and expense, shall check to see that tennis players have Parks tennis permits and maintain records of such.

1.8 Section 9.2(b) of the License Agreement is hereby amended by deleting Sections 9.2(b)(v), 9.2(b)(vi), and 9.2(b)(vii).

1.9 Section 9 of the License Agreement is hereby amended by inserting Section 9.27:

9.27 Licensee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Agreement Rider annexed hereto as **Exhibit G**.

1.10 Section 11.2 of the License Agreement is hereby amended by deleting Section 11.2 in its entirety and inserting the following new Section 11.2:

Smoking or the use of electronic cigarettes is strictly prohibited at the Licensed Premises. Licensee will be required to adhere to and enforce this policy.

1.11 Section 24.2 of the License Agreement is hereby amended by deleting Section 24.2 in its entirety and inserting the following new Section 24.2:

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least One Million Dollars (\$1,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26. “Blanket” or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26.

1.12 Section 24.5(A) of the License Agreement is hereby amended by deleting Section 24.5(A) in its entirety and inserting the following new Section 24.5(A):

The Licensee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

1.13 Section 24.7(C) of the License Agreement is hereby amended by deleting Section 24.7(C) in its entirety and inserting the following new Section 24.7(C):

There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

1.14 Section 24.7 of the License Agreement is hereby amended by inserting the following new Section 24.7(G):

Wherever this Article requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

1.15 Section 24.8(C) of the License Agreement is hereby amended by deleting Section 24.8(C) in its entirety and inserting the following new Section 24.8(C):

For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits Insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee’s policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by Insurance Broker or Agent” in the form required by the Commissioner, attached hereto as Exhibit F, or certified copies of all policies referenced in such Certificate of Insurance.

1.16 Section 24.8(D) of the License Agreement is hereby amended by deleting Section 24.8(D) in its entirety and inserting the following new Section 24.8(D):

Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage for all policies required under this License. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

1.17 Section 24.8(E) of the License Agreement is hereby amended by deleting Section 24.8(E) in its entirety and inserting the following new Section 24.8(E):

Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee’s obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Licensee’s liability for its failure to do so.

1.18 Section 24.9(H) of the License Agreement is hereby amended by deleting Section 24.9(H) in its entirety and inserting the following new Section 24.9(H):

Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 24.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Form CG 20 26 and 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability Insurance at least as broad as the most recent edition of ISO form CG 20 26).

1.19 Section 24.9 of the License Agreement is hereby amended by inserting the following new Section 24.9(I):

In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Center Street, Room 1005, New York, New York, 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

1.20 Section 28.1 of the License Agreement is hereby amended by deleting Section 28.1 in its entirety and inserting the following new Section 28.1:

- (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.
- (b) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee shall have strictly complied with all

requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

(d) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of Licensee.

1.21 **Exhibit B** to the License Agreement is amended by deleting the Schedule of Minimum Fee Payments (Summer Season).

1.22 **Exhibit B** to the License Agreement is amended by adding **Exhibit B1**, attached to this Third Amendment.

1.23 Except as amended by this Third Amendment, the License Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Third Amendment and the License Agreement, the terms of this Amendment shall govern and prevail in all instances.

1.24 This Third Amendment may be executed in several counterparts, which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
PARKS & RECREATION

YORK AVENUE TENNIS, LLC

By: _____

By: _____

Name:

Name:

Title:

Title:

Dated: _____

Dated: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2017 before me personally came _____ to me known, and known to be the _____ of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2017 before me personally came _____ to me known, and known to be the _____ of York Avenue Tennis, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein

Notary Public

EXHIBIT B1

AMENDED SCHEDULE OF MINIMUM FEE PAYMENTS

<u>DUE DATE</u>	<u>AMOUNT</u>	<u>% FEE</u>
Year 11		
09/01/17	\$219,771.50	
10/01/17	\$219,771.50	
11/01/17	\$219,771.50	
12/01/17	\$219,771.50	
01/01/18	\$219,771.50	VS 35% OF GROSS
02/01/18	\$219,771.50	
03/01/18	\$219,771.50	
04/01/18	\$219,771.50	
05/01/18	\$219,771.50	
06/01/18	\$219,771.50	
07/01/18	\$219,771.50	
08/01/18	\$219,771.50	
Year 11 Total	\$2,637,258.00	
Year 12 (Option Year 1)		
09/01/18	\$219,771.50	
10/01/18	\$219,771.50	
11/01/18	\$219,771.50	
12/01/18	\$219,771.50	
01/01/19	\$219,771.50	VS 35% OF GROSS
02/01/19	\$219,771.50	
03/01/19	\$219,771.50	
04/01/19	\$219,771.50	
05/01/19	\$219,771.50	
06/01/19	\$219,771.50	
07/01/19	\$219,771.50	
08/01/19	\$219,771.50	
Year 12 Total	\$2,637,258.00	
Year 13 (Option Year 2)		
09/01/19	\$219,771.50	
10/01/19	\$219,771.50	
11/01/19	\$219,771.50	
12/01/19	\$219,771.50	
01/01/20	\$219,771.50	VS 35% OF GROSS
02/01/20	\$219,771.50	
03/01/20	\$219,771.50	
04/01/20	\$219,771.50	
05/01/20	\$219,771.50	

06/01/20	\$219,771.50	
07/01/20	\$219,771.50	
08/01/20	\$219,771.50	
Year 13 Total	\$2,637,258.00	

EXHIBIT F

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT G

PAID SICK LEAVE LAW CONCESSION AGREEMENT RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The Concessionaire agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Concessionaire further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire.

The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500 for a

first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.